

Federal Defenders OF NEW YORK, INC.

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January 11, 2021

BY ECF

The Honorable Judge Richard M. Berman
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: United States v. Jamel Porter
20 Cr. 459 (RMB)

Honorable Judge Berman:

I write briefly in response to the Government's January 11, 2021 letter to the Court opposing defense counsel's requests for orders concerning Mr. Porter's medical care and legal calls.

The Government asserts that the defense "misunderstands the options available to the defense at Essex County Correctional Facility regarding attorney-client contact." That is false. As the defense noted during Mr. Porter's December 10, 2020 status conference, defense counsel has multiple times scheduled "professional visits" (video conferences) for multiple clients at Essex County Correctional Facility, including with Mr. Porter, which have been unsuccessful. Specifically, on December 2, 2020, I requested a "professional visit" video conference with Mr. Porter. The following day, the visit was scheduled for December 8, 2020. That day, I emailed the "inmate advocate" and was told the facility was running behind schedule because of connectivity issues.¹ I rescheduled Mr. Porter's call for December 10, 2020 at 9 am. At 9:09 am, I emailed the advocate for an update; I was told that the facility was again having connectivity issues. The facility did not connect me with Mr. Porter for a "professional visit" that day or any day thereafter.

In addition to these professional visits, defense counsel has also arranged legal phone calls with Mr. Porter through an inmate advocate. These phone calls have been successful in that there are no connectivity issues; I have been able to speak with Mr. Porter by telephone, as I have reported to the Court. However, as noted in the January 8, 2021 letter to the Court, these

¹ I had a separate "professional visit" with a different client scheduled the same day that also did not function properly. After momentarily connecting, the screen froze and the facility was unable to secure the connection. In that case, I substituted a legal phone call for the videoconference.

calls do not occur in private. Unlike “professional visits,” Mr. Porter is not in a private room with no other guards or inmates present, but rather occur in an open setting with other inmates and guards within earshot of Mr. Porter’s conversations. Certainly, these communications cannot be deemed confidential nor privileged communications with his attorney, which the Government concedes he is entitled to. The defense does not request that the Court order the facility to provide legal calls in a particular way, but rather that the Court order the facility ensure that Mr. Porter’s communications with counsel occur in private, in conformity with the Constitution. Accordingly, a Court order is necessary to ensure Mr. Porter receive access to the privileged and confidential legal calls to which he is constitutionally entitled.

With respect to Mr. Porter’s medical needs, if the Court is not inclined to order the Essex County Correctional Facility to provide particular medication and treatment, the defense respectfully requests that the Court recommend to the facility that it evaluate Mr. Porter at least once every 30 days to ensure his medical needs are met and to adjust his medication as necessary. The defense also requests that the Court recommend that the facility evaluate Mr. Porter’s need for the medication indicated in counsel’s January 8, 2021 letter to the Court in light of his prior medical records.

Thank you for your consideration of this matter.

Respectfully submitted,

/s/ Marne L. Lenox

Marne L. Lenox
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Counsel for Jamel Porter

cc: AUSA Jacob Fiddelman

Counsel for the Government is
directed to forward the submissions of
counsel to the General Counsel for
Essex County Correctional Facility in
order for the General Counsel to
respond directly to the submissions.

SO ORDERED:
Date: 1/27/2021

Richard M. Berman
Richard M. Berman, U.S.D.J.